

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT GALLEGOS, SR.,

Petitioner,

No. CIV S-04-2741 MCE GGH P

vs.

TOM CAREY, et al.,

Respondent.

ORDER

Petitioner, a state prisoner proceeding with appointed counsel, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, which was stayed by order, filed on October 17, 2005, pending exhaustion of new claims. The stay in this matter was to remain in effect until 30 days following the entry of a final order by the California Supreme Court as to petitioner's state court habeas petition. Petitioner's counsel has informed the court the petition was denied on June 14, 2006. Therefore, the court will direct that the stay be lifted in this action, nunc pro tunc, as of July 14, 2006.

Petitioner's counsel has also filed an unopposed application for leave to file a second amended petition. Based on petitioner's representation that the motion is unopposed by respondent the motion will be granted and the Clerk of the Court directed to deem the proposed second amended petition, lodged with petitioner's August 9, 2006, motion filed as of the date of

1 this order.

2 Finally, respondent will be granted 30 days to file either an answer or a motion to
3 dismiss; if the response is a motion, petitioner has 30 days to file an opposition, after which
4 respondent will have 15 days to file a reply, if any; if the response is to be an answer, petitioner
5 will have 30 days after the filing of the answer to file a reply (traverse).

6 Accordingly, IT IS ORDERED that:

7 1. The stay in this matter is lifted, nunc pro tunc, as of July 14, 2006.

8 2. Petitioner's August 9, 2006, unopposed request to file a second amended
9 petition is granted;

10 3. The Clerk of the Court is directed to deem the proposed second amended
11 petition, lodged on August 9, 2006, filed as of the date of this order;

12 4. Respondent is granted 30 days to file either an answer or a motion to dismiss,
13 should respondent file a dispositive motion, petitioner has 30 days to file an opposition,
14 following which respondent will have 15 days to file a reply, if any; if the response to the second
15 amended petition is an answer, petitioner will have 30 days after the filing of the answer to file a
16 reply (traverse).

17 DATED: 8/16/06

/s/ Gregory G. Hollows

18
19 _____
GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

20 GGH:009
21 gall2741.lft
22
23
24
25
26